



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[FRL 8794-04-OW]

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of rulemaking initiative.

SUMMARY: In accordance with President Biden's Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 25, 2021), the U.S. Environmental Protection Agency (EPA) announces its decision to undertake a rulemaking that will propose to revise the Steam Electric Power Generating Effluent Limitations Guidelines and Standards. As part of the rulemaking process, EPA will determine whether more stringent limitations and standards are appropriate and consistent with the technology-forcing statutory scheme and the goals of the Clean Water Act. EPA intends to sign the notice of proposed rulemaking for public comment in the Fall of 2022.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Among its core provisions, the Clean Water Act (CWA) prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under

section 402 of the CWA, 33 U.S.C. 1342, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a dual approach for these permits: (1) Technology-based controls that establish a floor of performance for all dischargers, and (2) water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable water quality standards (WQS). As the basis for the technology-based controls, the CWA authorizes EPA to establish national technology-based effluent limitations guidelines (ELGs) and new source performance standards (NSPS) for discharges into waters of the United States from categories of point sources (such as industrial, commercial, and public sources). For discharges to publicly owned treatment works (POTWs), sections 301, 306 and 307 of the CWA call for establishment of pretreatment standards, which are analogous to effluent limitations, which directly apply to new and existing sources.

Clean Water Act section 301(b)(2)(A) requires that, by March 31, 1989, existing discharges of toxic and non-conventional pollutants must be limited based on “best available technology economically achievable ...which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued ...pursuant to section 304(b)(2) of the Act.” Furthermore, such limitations “shall require the elimination of discharges of all pollutants if the Administrator finds ...that such elimination is technologically and economically achievable” for the industry, “as determined in accordance with regulations issued ...pursuant to section 304(b)(2).” Section 304(b)(2) provides that “[f]actors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspect of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.” The Agency is afforded considerable discretion in how to weigh these factors in making the ultimate decision as to what constitutes “best available technology economically Achievable.” *See, e.g.,*

Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1045 (D.C. Cir. 1978).

In September 2015, EPA finalized a rule revising the regulations for the Steam Electric Power Generating point source category 80 FR 67838 (Nov. 3, 2015). This 2015 rule set limits on the levels of toxic metals in wastewater that can be discharged from power plants. Subsequent to the promulgation of the 2015 rule, the Agency received two petitions for administrative reconsideration. In response, EPA agreed to reconsider the Effluent Guidelines for two wastestreams (flue gas desulfurization and bottom ash transport water) and the Steam Electric Reconsideration Rule was published in October 2020.

On January 20, 2021, President Biden signed Executive Order 13990 directing federal agencies to review rules issued in the prior four years that are, or may be, inconsistent with the policy stated in the Order. 86 FR 7037. The Order provides that “[i]t is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.” *Id.* at 7037, Section 1. The Order “directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *Id.* “For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.” *Id.* at 7037, Section 2(a). The 2020 Steam Electric Reconsideration Rule was identified for review under the Executive Order. *See* Fact Sheet: List of Agency Actions for Review, available at <https://www.whitehouse.gov/briefing-room/>

statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/ (last visited on April 26, 2021).

EPA has completed its review of the 2020 Steam Electric Reconsideration Rule under Executive Order 13990 and has decided to initiate a notice-and-comment rulemaking in which the Agency will determine whether more stringent limitations and standards are appropriate consistent with the technology-forcing statutory scheme and the goals of the Clean Water Act.

EPA's review found that much of the 2015 steam electric rule remains in place—leading to better control of water pollution from power plants than required by the previously applicable rules. The 2015 rule also had the effect of reducing the cost of controls (e.g., biological treatment systems and membrane treatment systems), which are now being utilized by the power sector. While the Agency undertakes this new rulemaking, facilities will continue to be subject to the requirements of the 2015 Rule, as amended by the 2020 Rule, which are currently effective. As a result, the pollutant reductions accomplished by the existing Rules will occur while the Agency engages in rulemaking to consider more stringent requirements.

EPA's review under Executive Order 13990 also found that membrane treatment systems continue to rapidly advance as an effective option for treating a wide variety of industrial wastewater. EPA expects this technology to continue to advance, and EPA will evaluate whether this technology should serve as the basis for the “best available technology economically achievable” under the Clean Water Act to control discharges of pollutants found in flue gas desulfurization wastewater discharges as part of the new rulemaking, in addition to considering whether revisions to the 2020 Rule's requirements applicable to bottom ash transport water and the three subcategories, which are afforded less stringent limits than those otherwise applicable under the Rule, may be warranted.

EPA expects permitting authorities to continue to implement the current regulations while the Agency undertakes a new rulemaking. EPA will determine whether more stringent limitations than those in the 2020 Rule appropriately reflect “best available technology

economically achievable.” EPA will undertake this rulemaking in accordance with the requirements specified in the Administrative Procedures Act and the Clean Water Act, as required by law.

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